INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Argument	12
Conclusion	22

CITATIONS

Cases:

American Power & Light Co. v. *Securities & Exchange Commission* 325 U.S. 385	13
Associated Industries v. *Ickes*, 134 F. 2d 694	14
City of Detroit, Michigan, et al. v. *Panhandle Eastern Pine Line Co.*, 6 F.P.C. 196	6
Federal Communications Commission v. *National Broadcasting Co.*, 319 U.S. 239	14
Federal Communications Commission v. *Sanders Brothers Radio Station*, 309 U.S. 470	13
Great Western B. Ass'n v. *Federal Communications Commission*, 94 F. 2d 244	15
Interstate Electric, Inc. v. *Federal Power Commission*, 164 F. 2d 485	14, 16
Michigan Consolidated Gas Co. v. *Federal Power Comm.*, 203 F. 2d 895	7, 19
Michigan Consolidated Gas Co. v. *Panhandle Eastern Pipe Line Co.*, 173 F. 2d 784	7
Michigan-Wisconsin Pipe Line Co., 5 F.P.C. 953	5
Michigan-Wisconsin Pipe Line Co., In the Matter of, 6 F.P.C. 1	4, 5, 14
Michigan-Wisconsin Pipe Line Co., In the Matter of, 6 F.P.C. 58	5, 6, 21
National Broadcasting Co. v. *Federal Communications Commission*, 132 F. 2d 545, affirmed, 319 U.S. 239	14, 15

Cases—Continued

	Page
National Coal Ass'n v. *Federal Power Commission*, 191 F. 2d 462	13, 14
Panhandle Eastern Pipe Line Co. v. *Federal Power Commission*, 169 F. 2d 881, certiorari denied, 335 U.S. 854	5
Panhandle Eastern Pipe Line Co. v. *Federal Power Commission*, 204 F. 2d 675	8, 19
Panhandle Eastern Pipe Line Co. v. *Federal Power Commission*, 204 F. 2d 925	8, 19
Panhandle Eastern Pipe Line Co. v. *Michigan Consolidated Gas Co.*, 177 F. 2d 942	7
Panhandle Eastern Pipe Line Co. v. *Michigan Consolidated Gas Co.*, 117 F. Supp. 551	7
Panhandle Eastern Pipe Line Co. v. *Securities and Exchange Commission*, 170 F. 2d 453	6
Panhandle Eastern Pipe Line Co., et al., 9 F.P.C. 1330	6
Panhandle Eastern Pipe Line Co., et al., In the Matters of, 10 F.P.C. 185	6
Panhandle Eastern Pipe Line Co., et al., In the Matters of, 10 F.P.C. 328	6
Phillips Petroleum Co. v. *State of Wisconsin*, 347 U.S. 672	10
Pittsburgh Radio Supply House v. *Federal Communications Commission*, 98 F. 2d 303	16
Reade v. *Ewing*, 205 F. 2d 630	14, 15, 16
Sanders Bros. Radio Station v. *Federal Communications Commission*, 106 F. 2d 321	13
Trunkline Gas Supply Co., Panhandle Eastern Pipe Line Co., et al., 9 F.P.C. 721	6
United States v. *Pink*, 315 U.S. 203	19
U.S. Cane Sugar Refiners' Ass'n v. *McNutt*, 138 F. 2d 116	14
Woodmen of the World Life Ins. Society v. *Federal Communications Commission*, 105 F. 2d 75	16
Yankee Network, Inc. v. *Federal Communications Commission*, 107 F. 2d 212	15, 16

BLEED THROUGH POOR COPY

Statutes and Regulation:

	Page
Natural Gas Act, 52 Stat. 821, as amended:	
Sec. 4, 15 U.S.C. 717c	20
Sec. 5, 15 U.S.C. 717d	20
Sec. 7, 15 U.S.C. 717f	20
Sec. 19(b), 15 U.S.C. 717r(b)	2, 11, 13
18 C.F.R. 1.1(f)(13)	14

Miscellaneous:

Panhandle Eastern Pipe Line Co., et al., 19 Fed. Reg. 1071-73	8

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 737

PANHANDLE EASTERN PIPE LINE COMPANY, A CORPORATION, PETITIONER

v.

FEDERAL POWER COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinions and order of the Federal Power Commission (Pet. App. pp. 16-40) are unreported. The opinion of the Court of Appeals (Pet. App. pp. 56-60) is reported at 219 F. 2d 729.

JURISDICTION

The judgment of the Court of Appeals was entered on March 21, 1955 (Pet. App. p. 74). The

petition for a writ of certiorari was filed on April 20, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

QUESTION PRESENTED

Whether, in the circumstances of this case, the court below was justified in dismissing the petition filed by Panhandle Eastern Pipe Line Company for review of an order of the Federal Power Commission, authorizing American Louisiana Pipe Line Company and Texas Gas Transmission Company to construct and operate certain pipeline facilities, on the ground that Panhandle was not aggrieved by the order as required by Section 19(b) of the Natural Gas Act.

STATUTE INVOLVED

Section 19(b) of the Natural Gas Act, 52 Stat. 821, 831, as amended, 15 U.S.C. 717r(b) provides:

> Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that

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the order of the Commission be modified or set aside in whole or in part. * * *

STATEMENT

Petitioner Panhandle Eastern Pipe Line Company filed in the court below a petition seeking review under Section 19(b) of the Natural Gas Act, *supra*, p. 2, of the order of the Federal Power Commission issuing certificates of public convenience and necessity to American Louisiana Pipe Line Company and Texas Gas Transmission Company for the construction and operation of certain pipeline facilities (Pet. App. pp. 1-15). The court below dismissed Panhandle's petition on the ground that it was not "aggrieved" by the Commission's order and therefore without standing under Section 19(b) to seek review. The pertinent facts are as follows:

The Parties. American Louisiana applied to the Federal Power Commission for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act to construct and operate a pipeline system, with an initial capacity of 300,000 Mcf per day, and extending approximately 1,300 miles from the producing fields in Louisiana, to supply gas for markets in Michigan, Wisconsin, Iowa and Missouri. The supply of natural gas was to be obtained from producers in southern Louisiana (250,000 Mcf per day) and, in Kentucky, from the Texas Gas Transmission Corp. (50,000 Mcf per day). American Louisiana proposed to deliver 200,000 Mcf per day to Michigan Consolidated Gas Company at Detroit and 100,000

Mcf. per day to Michigan Wisconsin Pipe Line Company at Bridgeman, Michigan (Pet. App. pp. 16-17). Texas Gas also applied for authority to construct and operate facilities in Kentucky to enable it to make the proposed deliveries to American Louisiana (Pet. App. p. 17).[1]

Michigan Consolidated, Michigan Wisconsin, and American Louisiana are affiliated companies, subsidiaries of American Natural Gas Company. Michigan Consolidated distributes natural gas to ultimate consumers in Detroit, Ann Arbor and other communities in Michigan. Michigan Wisconsin operates a pipeline system and delivers gas to 16 utility companies (including Michigan Consolidated) which service communities in Wisconsin, Michigan, Iowa and Missouri.

Prior to 1946, when it began to receive gas from Michigan Wisconsin, Michigan Consolidated's sole source of natural gas was Panhandle (6 F.P.C. at 12-13). Panhandle owns and operates an extensive transmission pipeline system. However, it does not serve any of the distributing companies or communities which will receive gas from American Louisiana—with the exception of Michigan Consolidated, to which it delivers 125,000 Mcf at Detroit and 2,000 Mcf at Ann Arbor.

Prior Proceedings: In 1946, when Michigan Wisconsin was authorized to construct and operate

[1] Applications were also filed by Michigan Consolidated and Michigan Wisconsin, seeking to receive the gas from American Louisiana, but the order here involved did not dispose of those applications nor of petitions by various intervening parties seeking gas from American Louisiana and Michigan Wisconsin for communities not now served (Pet. App., pp. 17, 18, 34).

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a pipeline from Texas to supply Michigan Consolidated and its other markets, including numerous communities not then served by natural gas (5 F.P.C. 953; 6 F.P.C. 1), the Commission found that there were great unsatisfied future requirements in Detroit and the other areas (6 F.P.C. at 12-16); for example, it was estimated that the total Detroit requirements in 1952 would be 87,000,000 Mcf and Panhandle had delivered in 1945 about 32,000,000 Mcf (*id.* 13). State regulatory commissions had been compelled to restrict the use of gas (*id.*, 28-29, 30) and it had been necessary to allocate and curtail deliveries from Panhandle's system in the winters of 1944-45 and 1946-47 (*id.*, 65).

In addition, in its supplemental opinion and order in that proceeding the Commission dealt specifically with the continuing interests of Panhandle in the Detroit market. 6 F.P.C. 58. It found that all Panhandle's applications to increase its service to the area had been granted but that Panhandle had at no time indicated any intention or desire to meet the great and growing demand (*id.*, 64-70). Further, while the contract between Panhandle and Michigan Consolidated was to expire on December 31, 1951, the Commission directed the continuation of Panhandle's pattern of service and its participation in future growth of the market. 6 F.P.C. 91.[2]

[2] The order authorizing the Michigan Wisconsin pipeline was reviewed on Panhandle's petition, and affirmed. *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 169 F. 2d 881 (C.A. D.C.), certiorari denied, 335 U.S. 854. Michigan Wisconsin's plan of financing was approved by the

Subsequently, in 1950, the Commission authorized Panhandle to increase its system capacity to 850,000 Mcf per day, an increase of about 350,000 Mcf. 9 F.P.C. 721. The Commission also gave an opportunity to Panhandle to negotiate contracts with its customers for an equitable share of the additional gas. 10 F.P.C. 185, 189-90. Panhandle negotiated such contracts with 47 of its customers, *i.e.*, all but four with whom it declined to contract. Included among the latter group was Michigan Consolidated which had sought an increase to 202,000 Mcf in the gas delivered to it.[3] By order issued in March 1952, the Commission declined to take any action on Michigan Consolidated's request for increased deliveries; noting that despite its increased capacity Panhandle had applied for authority to abandon some 37,500 Mcf of its service to Michigan Consolidated, the Commission ordered that, pending its determination in the abandonment proceeding, Panhandle should continue to deliver 127,000

Securities and Exchange Commission, and then was reviewed on Panhandle's petition and upheld by the Eighth Circuit. *Panhandle Eastern Pipe Line Co.* v. *Securities and Exchange Commission,* 170 F. 2d 453.

[3] Meanwhile, since it was clear that despite its increased capacity Panhandle would again be unable to meet the demands during the winter of 1951-52, the Commission allocated the available gas among Panhandle's numerous customers. In making this allocation, the Commission advised that it "does not expect, nor does it now intend, to issue further orders allocating the capacity of Panhandle pipeline system during ensuing winter periods." 10 F.P.C. 328, 338. For allocations made during the two previous winters, see 9 F.P.C. 1330; 6 F.P.C. 196.

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Mcf to Michigan Consolidated.[4] Simultaneously, the Commission ordered Panhandle to deliver the prior contracted amounts of gas to the three other customers to whom it had declined new contracts, as well as to Michigan Consolidated and the customers with whom new contracts had been negotiated.

Both Michigan Consolidated and Panhandle sought review of this order, Michigan Consolidated on the ground that it was discriminatory not to increase its allotment and Panhandle on the ground that the result of the Commission's order was to require it to deliver gas beyond its rated capacity of 850,000 Mcf per day and so improperly to require it to increase its capacity. The Court of Appeals for the Third Circuit, in April 1953, affirmed the allocation of only 127,000 Mcf to Michigan Consolidated, pointing out that the Commission's action was directed merely at maintaining the status quo pending its disposition of Panhandle's application to reduce its service to Michigan Consolidated. *Michigan Consolidated Gas Co.* v. *Federal Power Commission*, 203 F. 2d 895, 900-901 (C.A. 3). The Third Circuit at the same time reversed the Commission, on Panhandle's petition,

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[4] Michigan Consolidated has made several other unsuccessful attempts to obtain additional gas from Panhandle (*Michigan Consolidated Gas Co.* v. *Panhandle Eastern Pipe Line Co.*, 173 F. 2d 784 (C.A. 6); *Panhandle Eastern Pipe Line Co.* v. *Michigan Consolidated Gas Co.*, 177 F. 2d 942 (C.A. 6), or to obtain damages for failure to deliver sufficient amounts. *Panhandle Eastern Pipe Line Co.* v. *Michigan Consolidated Gas Co.*, 117 F. Supp. 551, 558-60 (E.D. Mich.).

holding that the Commission could not direct deliveries of gas in excess of capacity and remanding the case to the Commission for its determination of a fair distribution of Panhandle's available capacity among all customers. *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission,* 204 F. 2d 675 (C.A. 3). In view of this remand, the Third Circuit also directed the Commission to reconsider its order issued in August 1952 denying Panhandle's application to reduce its service to Michigan Consolidated. *Panhandle Eastern Pipe Line Company* v. *Federal Power Commission,* 204 F. 2d 925 (C.A. 3). These proceedings were then combined by the Commission with others for full consideration of fair distribution of Panhandle's capacity. 19 Fed. Reg. 1071-73.

The Present Proceeding: When American Louisiana and Texas Gas filed their applications for certificates of public convenience and necessity, Panhandle was permitted to intervene on the representation that it had a substantial economic interest in the markets to be served by American Louisiana and therefore was a competitor of American Louisiana (Pet. App. p. 30).[5] Hearings on the related applications of American Louisiana, Texas Gas, Michigan Wisconsin and Michigan Consoli-

[5] Panhandle's petition for leave to intervene set forth (at pp. 4-5) its current sales to Michigan Consolidated and other Michigan markets and also alleged that Panhandle and a subsidiary contemplated filing in the near future applications for certificates authorizing new facilities which "would render unnecessary and uneconomic the construction of the facilities proposed" by American Louisiana and the other applicants. (pp. 8-9)

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dated (see *supra*, pp. 3-4 and n. 1) were commenced on March 8, 1954 (Pet. App. p. 17). After recess on August 6, 1954, the Commission, at the request of American Louisiana, set the case down for oral argument and filing of briefs (Pet. App. pp. 17-18), after which it issued the opinion and order on October 1, 1954 (Pet. App. pp. 16-40), granting certificates to American Louisiana and Texas Gas.

In addition to making findings as to adequacy of design, availability of gas supply, financing and reasonableness of anticipated price (Pet. App. pp. 21-29), the Commission found that the present supply of gas available in the Michigan and Wisconsin markets involved had been "clearly inadequate" so that "stringent restrictions" had been imposed by it as well as the State Commissions on the expansion of service (Pet. App. p. 18). The Commission reviewed in detail the demands for gas—present and foreseeable—for residential and commercial as well as for firm and interruptible industrial uses (Pet. App. pp. 18-21), and reached the "inescapable" conclusion that there is a sufficient market to support the proposed project (Pet. App. p. 21). It directed, however, that, despite the issuance of the requested certificates to American Louisiana and Texas Gas, the proceeding should continue to determine more particularly the disposition of the gas (Pet. App. p. 21).[6] Finally, the Commission found that, although Panhandle's intervention had al-

[6] The Commission therefore deferred action on the applications of Michigan Consolidated and Michigan Wisconsin to receive gas from American Louisiana (Pet. App. pp. 32, 34).

leged competition, there was no proposal by Panhandle to meet the additional needs of Michigan Consolidated or of the other customers of Michigan Wisconsin and consequently it could not see wherein Panhandle would be aggrieved by the granting of the certificates (Pet. App. p. 30). Accordingly, after directing the omission of the intermediate procedure,[7] the Commission [8] ordered the issuance of certificates on the condition (among others) that the construction of the pipeline by American Louisiana should not be undertaken until the producers supplying a sufficient amount of gas had also received certificates from the Commission (Pet. App. pp. 32-34).[8a]

In its petition for review in the court below, Panhandle alleged that it "is a competitor of American Louisiana, Michigan Consolidated, Mich-

[7] The Commission found that American Louisiana's gas purchase contracts gave the producers the right to terminate on October 1, 1954 if no certificate was obtained and that if that eventuality had occurred, the "crying demand for additional quantities of natural gas in the Michigan-Wisconsin area * * * may not be satisfied for a considerable period of time" (Pet. App. p. 29).

[8] While two Commissioners dissented, their dissent was primarily on the ground that in view of *Phillips Petroleum Co.* v. *State of Wisconsin*, 347 U.S. 672, the certificates should not have been granted until after American Louisiana's suppliers had themselves applied for certificates (Pet. App. pp. 35-38). They agreed with the majority

> * * * concerning the demand for natural gas in the markets which this project proposes to serve. We have no doubt that this market can use all of the gas the applicant originally hoped to deliver, and more too, provided the price is low enough * * * [Pet. App. p. 38].

[8a] This condition has been fulfilled and the construction of the major portion of the pipeline now awaits the termination of this litigation.

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igan Wisconsin and Texas Gas within the purview of Section 15(a) of the Natural Gas Act" (Pet. App. p. 3). It also alleged that Michigan Consolidated receives about 42% of its gas from Panhandle, that Panhandle sold large volumes of gas to Michigan Consolidated for resale to consumers in Detroit, Ann Arbor and their environs, and that it sold 18,000 Mcf of gas per day to Texas Gas (Pet. App. pp. 3-4). Asserting that it was a party to the proceedings before the Commission and aggrieved by its orders (Pet. App. pp. 6, 7), Panhandle claimed that, in addition to numerous other alleged errors, there was no substantial evidence with respect to the availability of sufficient markets to absorb the volumes of gas contemplated by the certificate to American Louisiana (Pet. App. p. 12).

The court below granted the motions to dismiss filed by the Commission and the intervenors on the ground that the petition for review did not show that Panhandle was "aggrieved by an order issued by the Commission" as required by Section 19(b) of the Natural Gas Act, *supra*, p. 2 (Pet. App. pp. 56-61). While the court recognized that Panhandle had alleged that it was aggrieved by the Commission's order, "in its detailed exposition of the situation about which it complains no factual allegations are given which support the contention that it is aggrieved. The naked assertion is not enough" (Pet. App. p. 57). The court went on to note that it is undisputable that there is a crying demand for additional natural gas in Michigan and Wisconsin. Panhandle, the court pointed out, has not filed a competitive application, nor has it evinced any

interest in meeting this demand, and, indeed, it is attempting to abandon part of its service (Pet. App. p. 58). The court then referred to the abandonment proceeding (*supra*, pp. 6-7, 8) and concluded that, whatever the outcome of that proceeding, the gas delivered by American Louisiana to Michigan Consolidated "is not in displacement of any part of its Panhandle allotment but over and above it in order to provide for the increased requirements of the Michigan Consolidated territory" (Pet. App. p. 59).[9]

ARGUMENT

The resolution of the issue presented by this case, *i.e.*, whether the court below erred in holding that Panhandle was not aggrieved by the Commission's orders, depends primarily upon the particular facts. The court below accepted the well established standards relating to aggrievement and held only that under these standards Panhandle was not aggrieved by the administrative decision. And since this conclusion is clearly correct on the facts, particularly those well-known to that court

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[9] With respect to Texas Gas, the petition for review chiefly challenged the sufficiency of its gas supply. It was asserted that this supply included 18,000 Mcf per day from Panhandle, and that there was pending a proposed discontinuance of Panhandle's service to Texas Gas (Pet. App. pp. 12-13). Apparently, petitioner contended that its desire to abandon this service may be frustrated because the Commission recognized Texas Gas' obligation to supply American Louisiana (Pet. App. pp. 70-72). The Court of Appeals found no such result expressed or implied in the Commission's order herein and no perceptible aggrievement (Pet. App. p. 60). Panhandle does not press its contentions regarding Texas Gas in the petition to this Court. Pet. p. 8, n. 2.

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by virtue of the recent litigation among the parties, review by this Court is unwarranted.

1. Section 19(b) of the Natural Gas Act, *supra*, pp. 2-3, limits the initiation of review proceedings to any party to the Commission's proceedings "aggrieved" by its order. The decisions of this Court construing the similar language in other statutes relating to judicial review of administrative action have established that a person is "aggrieved" if he sustains substantial direct injury as a result of an order, even though not such injury as would give him standing to maintain an action for relief from it. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 476-77; *American Power & Light Co.* v. *Securities & Exchange Commission*, 325 U.S. 385, 390; see also *National Coal Ass'n* v. *Federal Power Commission*, 191 F. 2d 462, 464-65 (C.A. D.C.). As petitioner points out, most such aggrieved persons, other than applicants, are competitors attempting to protect their existing position in a market. But in each case they were recognized as aggrieved only because of the direct injury which was to be inflicted upon them. For example, in the *Sanders* case, *supra*, the existing radio station alleged that there was insufficient advertising revenue to support two stations, and consequently that the issuance of a license for a second station would result in substantial financial loss to it. See 106 F. 2d 321, 323. Similarly, all the other decisions stemming from this doctrine and permitting review are based on claims of injury,

either economic (*e.g., National Coal Ass'n* v. *Federal Power Commission, supra; Associated Industries* v. *Ickes,* 134 F. 2d 694 (C.A. 2)), or of some other nature. *E.g., Federal Communications Commission* v. *National Broadcasting Co.,* 319 U.S. 239 (electrical interference); *Reade* v. *Ewing,* 205 F. 2d 630 (C.A. 2) (harmful ingredients).

It is also settled that the harm must be substantial and probable in order to give standing to seek review. Administrative decisions often have impact on substantial segments of the public and may possibly affect a large number of interests in some way. In a proceeding like this one, besides existing natural gas companies, the Commission permits the participation of local governmental units and regulatory bodies, as well as persons representing the interests of producers of competing fuels, labor unions, and railroads. Pet. App. pp. 23, 30. See, also, e.g., 6 F.P.C. at 7. But since it would unreasonably burden the administrative process if all could be considered "aggrieved",[10] review is held limited to those "who can show some direct adverse effect traceable with reasonable certainty" to the agency action. *U.S. Cane Sugar Refiners' Ass'n* v. *McNutt,* 138 F. 2d 116, 120 (C.A. 2); see also *National Coal Ass'n* v. *Federal Power Commission,* 191 F. 2d at 465; *National*

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[10] The Commission's permission to Panhandle to intervene did not constitute recognition that it might be aggrieved by any order in the proceeding. 18 C.F.R. 1.1(f)(13). See *Interstate Electric, Inc.* v. *Federal Power Commission,* 164 F. 2d 485 (C.A. 9).

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Broadcasting Co. v. *Federal Communications Commission*, 132 F. 2d 545, 548 (C.A. D.C.), affirmed, 319 U.S. 239; *Yankee Network, Inc.* v. *Federal Communications Commission*, 107 F. 2d 212, 215 (C.A. D.C.). As Justice Rutledge, then on the Court of Appeals for the District of Columbia, said, writing a gloss on *Sanders* in *National Broadcasting Co.* (132 F. 2d at 548):

> Presumably by the decision in the Sanders case the Supreme Court intended that the financial injury must be something more than nominal or highly speculative. It seems not unreasonable to read the opinion as requiring by implication that there be probable injury of a substantial character. So much by way of limitation seems necessary to prevent vindication of the public interest from turning into mass appeals by the industry at large, with resulting hopeless clogging of the administrative process by judicial review.

2. To determine whether there was such "probable injury of a substantial character" to Panhandle, the court below properly looked to the petition to review and its assignment of errors. *Reade* v. *Ewing*, 205 F. 2d 630 (C.A. 2); *National Broadcasting Co.* v. *Federal Communications Commission*, *supra*, 132 F. 2d at 548; *Yankee Network, Inc.* v. *Federal Communications Commission*, *supra*, 107 F. 2d at 224; *Great Western B. Ass'n* v. *Federal Communications Commission*, 94 F. 2d 244, 248 (C.A. D.C.). And as the Court of Appeals held

here (Pet. App. p. 57), Panhandle's naked assertion of aggrievement in general terms is not sufficient. The petition to review must contain supporting allegations of fact, which are made in good faith and are substantial. *Reade* v. *Ewing, supra; Interstate Electric, Inc.* v. *Federal Power Commission,* 164 F. 2d 485 (C.A. 9); *Pittsburgh Radio Supply House* v. *Federal Communications Commission,* 98 F. 2d 303, 305-06 (C.A. D.C.).[11]

Panhandle, in its petition for review, alleged that it is a competitor of American Louisiana, Michigan Consolidated, Michigan Wisconsin and Texas Gas, and it described in general terms its sales to Michigan Consolidated and to others in the State of Michigan. However, despite the Panhandle service in the Detroit area, there plainly was a vast unsatisfied demand for gas in that region which American Louisiana hoped to satisfy. Panhandle avers no offer nor any apparent attempt to supply this unsatisfied demand notwithstanding its assertion in January 1954, in its petition for intervention before the Commission, that it contemplated doing so. On the contrary, it has continued diligently to prosecute its application to

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[11] The opinion in *Yankee Network, Inc.* v. *Federal Communications Commission, supra,* states that even if a petition is sufficient on its face, the court may examine the record and must dismiss the appeal if no aggrievement appears. 107 F. 2d at 224. See *Woodmen of the World Life Ins. Soc.* v. *Federal Communications Commission,* 105 F. 2d 75 (C.A. D.C.). But there is no implication, as petitioner apparently contends (Pet. p. 22), that a court is under a duty to search the record for facts to cure a petition insufficient on its face.

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reduce its service to Michigan Consolidated. These circumstances fully justified the conclusion of the court below that there was nothing to support Panhandle's bare allegation that it was a competitor for the service contemplated in the American Louisiana certificate, particularly since the latter service was intended not to supplant but rather to supplement Panhandle's.

Petitioner's main answer (see Pet. pp. 17, 20) is that it expressly disputes the existence of sufficient unsupplied demand to absorb the American Louisiana Gas—a fact which the Court of Appeals thought "can hardly be disputed" (Pet. App. p. 58)—and therefore that on the face of its petition petitioner is seeking to protect its existing market. And petitioner points to the allegations in its review petition that the certificate was granted "in the absence of substantial evidence with respect to the availability of sufficient markets to absorb the volume of gas contemplated." Pet. App. p. 12; *id.*, p. 9.[12]

But these allegations merely repeat the pattern of other paragraphs of the petition which assert

[12] Panhandle's contention (Pet., p. 18) that earlier orders of the Commission indicate doubt as to the adequacy of the markets is erroneous. In the order of Aug. 2, 1954 (which was quoted in the Aug. 13, 1954, order), the Commission dsicussed only the producers' compliance with the Act as an element in an applicant's being "able and willing" to perform. To support this, the Commission noted that willingness and ability had to be based on subsidiary findings; "marketability" was listed as one of these ordinary prerequisites but there is no hint of doubt as to the markets available here. See Pet. App. pp. 41-42, 45-46.

the "absence of substantial evidence" of various statutory requisites. (Pet. App. pp. 8-12) No affirmative allegations were made that the markets are insufficient and that American Louisiana will therefore conflict with Panhandle in sales to Michigan Consolidated. Nor could such allegation be made at this stage for, while the Commission authorized the American Louisiana certificate, it expressly continued the proceeding for a *subsequent* determination of how the gas should be distributed; until that determination is made, the extent to which American Louisiana gas will serve the Detroit market is unknown.

Moreover, in its petition in this Court, Panhandle apparently continues to argue in part on the erroneous assumption that it may demand from the Commission sufficient showing of adequacy of markets to fulfill the statutory standards. (Pet. pp. 18-19). Panhandle, however, may present the errors in the Commission's decision only if it has shown that it is aggrieved by the order, and the burden is on it to make that showing. In this instance, that burden could be borne only by sufficient averments that no unsatisfied demand existed and it was Panhandle's obligation to show the Court of Appeals that such was the case. It cannot rely on a simple denial of the Commission's finding, without specific and detailed allegations showing, at least *prima facie,* that the Commission was wrong and that Panhandle's market would be actually and substantially affected to its detriment.

Finally, it is pertinent to note that the court

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below had recently heard one case in which Michigan Consolidated challenged as insufficient the volume of gas received from Panhandle under the Commission's restrictive allocations (203 F. 2d 895); another, in which Panhandle attacked a Commission order directing the delivery of amounts of gas in excess of the capacity of Panhandle's system, in order to avoid discrimination (204 F. 2d 675); and still another in which Panhandle sought to reduce its service to Michigan Consolidated (204 F. 2d 925). Informed by this litigation and its history of enforced curtailment of natural gas use, the court below was clearly justified in bringing to bear its experience and on that basis to recognize the crying demand for natural gas in this area.[13] Cf. *United States* v. *Pink*, 315 U.S. 203, 217, and cases there cited.[14]

3. Panhandle seeks to assert two additional

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[13] Not only did the court below know from its experience in the prior litigation that, despite Panhandle's allegation, the existing and potential markets were sufficient to absorb the American Louisiana gas but the Commission, which in addition was familiar with the particular record in this case, was unanimous on the point (see *supra*, pp. 9-10, n. 8). Summarizing its detailed discussion of the actual and potential demand in the areas to be served by American Louisiana (Pet. App. pp. 18-21), the Commission majority commented that "the conclusion is inescapable that there exists a market sufficient to support the construction of a project of the magnitude proposed by American Louisiana" (Pet. App. p. 21). The evidence in the administrative record fully supports this conclusion.

[14] Of the members of the bench in the instant case, Judge Kalodner sat on all three of the recent cases. Judge McLaughlin, who wrote the opinion for the court below, participated in 203 F. 2d 895 and 204 F. 2d 675, while Judge Hastie participated in 204 F. 2d 925.

grounds of aggrievement to supplement the general allegations of its petition for review. First, it claims that it already directly competes with Michigan Consolidated for sales to industrial customers, citing as an example the current controversy over sales of gas to McLouth Steel Co. (Pet. p. 17). Apart from the fact that Panhandle made no point of this alleged competition before the Commission and in its petition for review in the Court of Appeals, it is plain that, whatever the results in individual transactions, no injury is likely unless the total demand in the market is less than all the gas available.

Second, Panhandle alleges that it may be excluded from any sales to Michigan Consolidated, whether 127,000 Mcf or 87,500 Mcf per day, because of the affiliation among American Louisiana, Michigan Consolidated, and Michigan Wisconsin. It points to the exemption of Michigan Consolidated from the Natural Gas Act as presaging this injury to it. (Pet. pp. 22-24.) However, there is no indication or allegation that American Louisiana gas could or would supplant that supplied by Panhandle in view of the vast unsatisfied demand. Furthermore, American Louisiana and Michigan Wisconsin, the affiliates supplying Michigan Consolidated, are natural gas companies subject to regulation under the Act and are therefore not free to oust Panhandle at their pleasure.[15] The initial

[15] Changes in service are subject to Commission supervision under Sections 4 and 5 of the Natural Gas Act, 15 U.S.C.

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certificate of public convenience and necessity granted to Michigan Wisconsin was upon the express Commission requirement that Panhandle be afforded reasonable opportunity to deliver and sell to Michigan Consolidated quantities of gas corresponding to the previous pattern of service, and to participate in future growth of the market. 6 F.P.C. 91. In this case, disposition of the American Louisiana gas has not yet been made by the Commission (Pet. App. pp. 21, 33-34; *supra,* pp. 9, 18) and it cannot be assumed that the Commission will not provide similar protection for Panhandle. Until the Commission has acted, any aggrievement to Panhandle on this score is purely speculative.

717c, 717d. Any alteration in the volumes or allocations fixed in the certificate require application under Sec. 7 of the Act, 15 U.S.C. 717f.

CONCLUSION

We respectfully submit that the petition for a writ of certiorari should be denied.

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